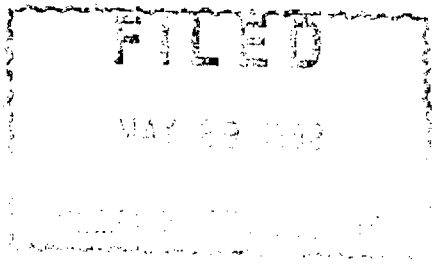
IN THE COURT OF APPEALS OF IOWA

No. 7-623 / 97-0153
Filed May 29, 1998

IN RE THE MARRIAGE OF DONALD M. TELLIN AND JOYCE ANN TELLIN

Upon the Petition of
DONALD M. TELLIN,
Appellant,

And Concerning
JOYCE ANN TELLIN,
Appellee.



Appeal from the Iowa District Court for Mahaska County, Richard J. Vogel, Judge.

On appeal from the entry of a dissolution decree, Donald argues the district court erred in awarding Joyce $500 per month in reimbursement alimony. **AFFIRMED AS MODIFIED.**

Randy S. DeGeest of DeGeest Law Office, Oskaloosa, for appellant.

Eric J. Palmer of Palmer & Palmer, Oskaloosa, for appellee.

Considered by Cady, C.J., and Huitink and Mahan, JJ. Sackett, J., takes no part.

HUITINK, J.

Donald and Joyce Tellin were married in 1975. They had two children: Anthony, who is now an adult; and Nicholas, who was born in 1981.

During the marriage, Donald was employed as a data processing manager at Clow Corporation. He has annual income of approximately $59,000. Donald's job required him to work long hours. Joyce did not work outside the home for much of the marriage, although she had a teaching certificate. She took jobs with flexible hours which allowed her to care for the home and children. In 1995, Joyce obtained a job as a high school math teacher. She has an annual income of $19,500.

Donald filed a petition for dissolution of marriage in June 1996. After the parties separated they sold their home and used the proceeds to pay off their credit card debts. The parties agreed to a division of their household goods. They also agreed Nicholas should be placed in the physical care of Donald.

Joyce would like to return to school part-time to obtain her master's degree, which would increase her income as a high school teacher. Joyce has a thyroid condition and depression, and requires medication for these conditions. Her health insurance pays for a portion of her prescriptions.

The district court issued a dissolution decree for the parties on December 26, 1996. Under the child support guidelines, the court ordered Joyce to pay child support of $224 per month. The court determined Joyce was entitled to reimbursement alimony of $500 per month until Donald retires. At that time, Joyce

will be entitled to one-half of Donald's pension which accumulated during the marriage. Donald is also entitled to one-half of Joyce's IPERS benefits which accumulated during the marriage. Donald appealed.

Our review of this equitable action is de novo. Iowa R. App. P. 4. We are not bound by the district court's findings of fact, but we do give them deference because the district court had the opportunity to view, firsthand, the demeanor of the witnesses when testifying. *In re Marriage of Miller*, 532 N.W.2d 160, 162 (Iowa App. 1995).

Donald claims Joyce is not entitled to reimbursement alimony. He believes Joyce did not make any economic sacrifices during the marriage which directly enhanced his earning capacity. He asserts, at most, Joyce is entitled to rehabilitation alimony of $6000 to help her acquire her master's degree. He asks to have the alimony terminate on the death of either party or Joyce's remarriage.

Joyce argues she did make economic sacrifices which enhanced Donald's earning capacity. She states she was required to perform all family and household responsibilities because Donald was working such long hours. Joyce points out she took jobs which did not interfere with her care of the children and because of this her earning capacity was reduced. Joyce asserts the alimony should not terminate if she remarries since it is reimbursement alimony.

Alimony is not an absolute right; an award depends upon the circumstances of each particular case. *In re Marriage of O'Rourke*, 547 N.W.2d 864, 866 (Iowa App. 1996). When determining the appropriateness of alimony, the court must consider:

(1) the earning capacity of each party; and (2) present standards of living and ability to pay balanced against the relative needs of the other spouse. *Id.*

Reimbursement alimony is predicated upon economic sacrifices made by one spouse during the marriage that directly enhance the future earning capacity of the other. *In re Marriage of Gillilland,* 487 N.W.2d 363, 365 (Iowa App. 1992). Reimbursement alimony is not subject to modification or termination until full compensation is achieved, but must terminate upon the recipient's death. *In re Marriage of Francis,* 442 N.W.2d 59, 64 (Iowa 1989).

The record in this case does not support an award of reimbursement alimony. Traditional alimony is appropriate where life patterns have largely been set and the earning potential of both parties can be predicted with some reliability. *Francis,* 442 N.W.2d at 62-63. Also, the contributions and sacrifices of the one spouse in enabling the other to attain a higher degree of earning capacity have been compensated by many years of a comfortable lifestyle. *Id.* at 63; *O'Rourke,* 547 N.W.2d at 867.

Due to the differences in the parties' earning capacities, and Joyce's health problems, we determine Joyce is entitled to traditional alimony of $500 per month. This alimony will terminate upon her remarriage, the death of either party, or Donald's retirement, whichever occurs first.

We affirm the provisions of the parties' dissolution decree, except we modify the alimony provision as discussed above. Costs of this appeal are assessed one-half to each party.

AFFIRMED AS MODIFIED.